

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|------------------------|---|----------------------------|
| In re Application of: |) | CONNECTING SYSTEM FOR |
| |) | TELESCOPINGLY ENGAGED |
| SMOLENSKI et al. |) | ELEMENTS AND METHOD... |
| |) | |
| |) | Examiner: Victor D. Batson |
| Serial No. 10/646,323 |) | |
| |) | Group Art Unit 3677 |
| Filed: August 22, 2003 |) | |
| |) | Confirmation No. 9692 |

DECLARATION OF JOHN S. MORTIMER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, John S. Mortimer, declare that:

1. I am a partner at the law firm of Wood, Phillips, the firm of record in the above identified application.
2. I am a member in good standing of the bar of the State of Illinois.
3. I am currently registered to practice before the United States Patent and Trademark Office.
4. I was solely responsible for the prosecution of the above-identified patent application and conducted all pertinent communications with the Patent Office in this matter, including those made in writing and by telephone.
5. It is my practice to record billable activities in a diary on the day that they take place, as I did with actions taken with respect to this matter. Those entries are converted to bills at the end of each calendar month and mailed to clients for payment.

Thirteen pages of billing reflecting activities performed with respect to this matter are appended hereto as Attachment A. These pages are copies of bills sent to the client with hours and dollar amounts redacted. My statements below are based on my best recollection of events as refreshed by viewing these bills.

6. On October 23, 2007, I conducted a telephone interview with Examiner Rodriguez and, at the conclusion thereof, was of the belief that the Examiner was willing to allow the application with certain claim amendments. Following the interview on that same day, I prepared and forwarded an After Final Amendment for preliminary review by the Examiner, as indicated on page 1 of Attachment A. This Amendment incorporated the discussed claim amendments.

7. As indicated in Attachment A on page 2, on November 5, 2007 and November 6, 2007 I had discussions with Examiner Rodriguez regarding the draft Amendment provided to her on October 23, 2007.

8. On November 6, 2007, following the discussions with Examiner Rodriguez, I signed the Amendment Under 37 CFR 1.116, which was actually mailed on November 7, 2007. In that Amendment, in the Remarks portion on page 22, I summarized the conclusions of the telephone communications with Examiner Rodriguez on November 5, November 6, and October 23, 2007, therein indicating that the Examiner had agreed that claim 1, as presented, and thus the remaining rejected claims based thereon, were in allowable form.

9. As indicated in Attachment A on pages 3 and 4, following the Examiner's mailing of an Advisory Action on December 10, 2007, in which Examiner Rodriguez had taken a position inconsistent with that agreed to during the earlier interviews, I called

Examiner Rodriguez to discuss the Advisory Action separately on December 18, 2007 and January 14, January 16, and January 17, 2008. As noted on the January 17, 2008 entry, it was agreed that the Examiner would make some further amendments to place the case in condition for allowance.

10. As indicated in Attachment A on page 5, I made separate calls to Examiner Rodriguez on April 3 and April 7, 2008. The entry on April 7 confirms that the Examiner indicated on that date that the case was to be formally allowed without any further submissions on the applicant's part.

11. In Attachment A on page 6, it is noted that I received a call from an Examiner. My best recollection is that the call was from Examiner Rodriguez, responding to my call, and requesting a return call. The Examiner did not, during this call, or any call on or after October 23, 2007, indicate that the application would not be allowed.

12. In Attachment A, pages 7-10, there are entries evidencing calls made by me to Examiner Rodriguez. Based upon these entries, it is my recollection that on June 1, June 25, July 13, August 17, and October 1, 2009, I left messages at the extension at which I had earlier reached Examiner Rodriguez. I do not recall that Examiner Rodriguez left any personal identification. Rather, I believe that only the extension was identified. While I did leave messages on these dates, no return call was ever made by anyone at the Patent Office.

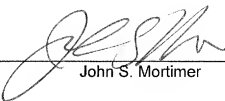
13. In Attachment A on page 11, an entry is made evidencing that I called to the last known supervisor of Examiner Rodriguez. I do not have any specific recollection of the details of this conversation, but do have a vague recollection that this

particular Examiner was performing a different role at the Patent Office and could not assist me on this case.

14. As indicated in Attachment A on pages 12 and 13, I ultimately talked with Examiner Batson on at least two different occasions (January 4, 2010 and March 2, 2010) regarding the status of this case. Examiner Batson agreed to assist in finding out what had happened to the case in light of the fact that prosecution had lapsed and I had received no response to any phone calls or written communications regarding status. I recall that Examiner Batson explained to me that Examiner Rodriguez was no longer with the Patent Office and that he would investigate to see whether any files of Examiner Rodriguez were available to shed light on what had transpired in this prosecution. Mr. Batson eventually advised me that he could not determine precisely what had transpired but informed me that a Notice of Abandonment would be mailed because, based upon the paperwork available, it could not be determined what Examiner Rodriguez had represented and thus, in the absence of further information, the application would be abandoned based on the October 4, 2007 Final Office Action, to which no "proper" reply was made.

I hereby declare that all statements made herein of my knowledge are true; and further, that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

IN WITNESS WHEREOF, I have executed this Declaration this 27th day of
May, 2010.



John S. Mortimer

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Suite 3800
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Echo Inc.

Attn: Mr. Daniel J. Obringer
400 Oakwood Road
Lake Zurich IL 60047

Page: 1

Invoice Date: 10/31/2007
Account No: 00601P00100US
Invoice No: 23533
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

| | Hours | Amount |
|---|-------|--------|
| 10/10/2007 | | |
| JSM Review office action - call to Examiner re interview based on Examiner error. | | |
| 10/23/2007 | | |
| JSM Review file - conduct interview with Examiner Rodriguez - prepare and forward after Final amendment for preliminary review. | | |

Current Services Rendered for Matter: _____

Recapitulation

| <u>Attorney</u> | <u>Hours</u> | <u>Hourly Rate</u> | <u>Total</u> |
|------------------|--------------|--------------------|--------------|
| John S. Mortimer | | | |

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
will be billed at a later time.

Attachment A
11/13

Wood, Phillips, Katz, Clark & Mortimer
500 West Madison
Suite 3800
Chicago, Illinois 60661
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Echo Inc.

Attn: Mr. Daniel J. Obringer
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Page: 1

Invoice Date: 11/30/2007
Account No: 00601P00100US

Invoice No: 23859
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

| | Hours | Amount |
|---|-------|--------|
| 11/5/2007 | | |
| JSM Conference with Examiner regarding amendment. | | |
| 11/6/2007 | | |
| JSM Field call from Examiner and file amendment. | | |

Current Services Rendered for Matter: _____

Recapitulation

| <u>Attorney</u> | <u>Hours</u> | <u>Hourly Rate</u> | <u>Total</u> |
|------------------|--------------|--------------------|--------------|
| John S. Mortimer | | | |

CURRENT MONTH TOTAL

Total Matter Balance Due _____

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2/1/3

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Echo Inc.
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Lake Zurich IL 60047

Page: 1

Invoice Date: 12/31/2007
Account No: 00601P00100US
Invoice No: 24112
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

12/18/2007

Hours Amount

JSM Review Advisory Action and call to Examiner.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

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3/13

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Echo Inc.

Attn: Mr. Daniel J. Obringer
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Lake Zurich IL 60047

Page: 1

Invoice Date: 1/31/2008
Account No: 00601P00100US

Invoice No: 24466
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

| | Hours | Amount |
|---|-------|--------|
| 1/14/2008 | | |
| JSM Review file - follow up all to Examiner Rodriguez regarding Advisory Action. | | |
| 1/16/2008 | | |
| JSM Call to Examiner and supervisor regarding status following submission of improper Advisory Action. | | |
| 1/17/2008 | | |
| JSM Confer with Supervising Examiner regarding status - confer with Examiner Rodriguez - agree to further amendments to place in condition for allowance. | | |
| 1/17/2008 | | |
| JSM Record Assignment. | | |

Current Services Rendered for Matter: _____

Recapitulation

| Attorney | Hours | Hourly Rate | Total |
|------------------|-------|-------------|-------|
| John S. Mortimer | | | |

Government Assignment Recording Fee

Disbursements per Matter Thru 1/31/2008 _____

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
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4/13

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Echo Inc.

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Page: 1

Invoice Date: 4/30/2008

Account No: 00601P00100US

Invoice No: 25408

PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

Hours Amount

4/3/2008

JSM Check file re status - follow up with Examiner regarding promised Notice of
Allowance - check on-line re status and call to Examiner.

4/7/2008

JSM Conferences with Examiner re case status. Case indicated to be allowed.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
will be billed at a later time.

5/13

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Echo Inc.
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Lake Zurich IL 60047

Page: 2

Invoice Date: 4/30/2009
Account No: 00601P00100US

Invoice No: 26794
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

4/29/2009

Hours Amount

JSM Field call from Examiner. Check file regarding status.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
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6/13

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Echo Inc.
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Lake Zurich IL 60047

Page: 1

Invoice Date: 6/30/2009
Account No: 00601P00100US
Invoice No: 29299
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

| | Hours | Amount |
|---|-------|--------|
| 6/1/2009 | | |
| JSM Check file and call to Examiner regarding status. | | |
| 6/25/2009 | | |
| JSM Check file and call to examiner regarding status. | | |

Current Services Rendered for Matter: _____

Recapitulation

| <u>Attorney</u> | <u>Hours</u> | <u>Hourly Rate</u> | <u>Total</u> |
|------------------|--------------|--------------------|--------------|
| John S. Mortimer | | | |

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
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7/13

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Echo Inc.
Attn: Ron Carlson
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Lake Zurich IL 60047

Page: 1

Invoice Date: 7/31/2009
Account No: 00601P00100US
Invoice No: 29616
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

7/13/2009

Hours Amount

JSM Call to Examiner regarding status.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
will be billed at a later time.

8/13

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Echo Inc.

Page: 2

400 Oakwood Road
Lake Zurich IL 60047

Invoice Date: 8/31/2009
Account No: 00601P00100US

Invoice No: 29906

PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

8/17/2009

Hours Amount

JSM Call to Examiner Rodriguez regarding status.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
will be billed at a later time.

9/13

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Echo Inc.

Page: 2

400 Oakwood Road
Lake Zurich IL 60047

Invoice Date: 10/31/2009
Account No: 00601P00100US
Invoice No: 30450
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

10/1/2009

Hours Amount

JSM Check file and call to Examiner Rodriguez regarding status.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
will be billed at a later time.

10/13

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Echo Inc.

Page: 3

400 Oakwood Road
Lake Zurich IL 60047

Invoice Date: 12/31/2009
Account No: 00601P00100US
Invoice No: 30941

PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

12/28/2009

Hours Amount

JSM Review file and call to supervisor regarding status.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
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11/13

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Echo Inc.

Page: 2

400 Oakwood Road
Lake Zurich IL 60047

Invoice Date: 1/31/2010
Account No: 00601P00100US
Invoice No: 31224
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

1/4/2010

Hours Amount

JSM Review file and call to Examiner Batson (supervisor for Examiner Rodriguez)
regarding status.

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

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12/13

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Echo Inc.

Page: 1

400 Oakwood Road
Lake Zurich IL 60047

Invoice Date: 3/31/2010
Account No: 00601P00100US
Invoice No: 31797
PAYABLE UPON RECEIPT

Patent Application - "CONNECTING SYSTEM FOR TELESCOPINGLY ENGAGED
ELEMENTS AND METHOD OF MAINTAINING THE ELEMENTS TOGETHER
USING THE SYSTEM" Ser. No. 10/646,323

3/1/2010

Hours Amount

JSM Check file and call to new Examiner regarding status.

3/2/2010

JSM Confer with Examiner Batson regarding lost case (PTO error).

Current Services Rendered for Matter: _____

Recapitulation

Attorney

Hours

Hourly Rate

Total

John S. Mortimer

CURRENT MONTH TOTAL

Total Matter Balance Due _____

Disbursements incurred not appearing on this invoice
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13/13